



[Docket No. FR-6369-N-01]

Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) and Community Development Block Grant Mitigation (CDBG-MIT) Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG-DR) and Community Development Block Grant mitigation (CDBG-MIT) funds awarded under several appropriations acts identified in the Table of Contents. Specifically, this notice provides waivers and establishes alternative requirements for certain CDBG-DR and CDBG-MIT grantees that have submitted requests for waivers and alternative requirements for grants provided under the public laws cited in this notice.

DATES: Applicability Date: **[INSERT DATE FIVE DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202-708-3587 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit:

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority to Grant Waivers

II. Public Law 115-56, 115-123, and 116-20 Waivers and Alternative Requirements

III. Public Law 116-20 Waivers and Alternative Requirements

IV. Finding of No Significant Impact (FONSI)

I. Authority to Grant Waivers

Each of the appropriations acts cited in the Table of Contents authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

All waivers and alternative requirements authorized in this notice are based upon a determination by the Secretary that good cause exists, and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCDA). The good cause for each waiver and alternative requirement is summarized in this notice.

II. Public Law 115-56, 115-123, and 116-20 Waivers and Alternative Requirements

Waiver to Allow Assistance to Privately Owned Utilities (Commonwealth of Puerto Rico only)

The *Federal Register* notice published on February 9, 2018 (83 FR 5844) (“February 2018 Notice”) announced an allocation of \$1,507,179,000 of CDBG-DR funds under Public Law 115-56 for the Commonwealth of Puerto Rico (the “Commonwealth”) for disasters occurring in 2017. Under Public Law 115-123, the following *Federal Register* notices were published that announced additional funding for the Commonwealth: the *Federal Register* notice published on August 14, 2018 (83 FR 40314) (“August 2018 Notice”) announced an additional allocation of \$8,220,783,000 of CDBG-DR funds for disasters occurring in 2017; the *Federal Register* notice published on January 27, 2020 (85 FR 4676) (“PR CDBG-MIT Notice”) announced an allocation of \$8,285,284,000 of Community Development Block Grant mitigation (CDBG-MIT) funds; and

the *Federal Register* notice published on June 22, 2021 (86 FR 32681) (“June 2021 Notice”) announced an allocation of \$1,932,347,000 of CDBG–DR funds for enhanced or improved electrical power systems. An additional *Federal Register* notice published on January 27, 2020 (85 FR 4681) (the “January 2020 Notice”) announced the allocation of \$277,853,230 of CDBG–DR funds under Public Law 116-20 for unmet infrastructure needs from disasters that occurred in 2017. Finally, the *Federal Register* notice published on January 6, 2021 (86 FR 569) (“January 2021 Notice”) announced an allocation of \$36,424,000 of CDBG-DR funds under Public Law 116-20 for disasters occurring in 2019.

The Commonwealth is subject to additional notices incorporated by the notices announcing allocations. The PR CDBG-MIT Notice directs the Commonwealth to follow the requirements in the *Federal Register* notice published on August 30, 2019 (84 FR 45838) (“CDBG-MIT Main Notice”) in addition to the requirements of the PR CDBG-MIT Notice; and both the January 2020 Notice and the January 2021 Notice requires grantees to adhere to “Prior Notices” (For the January 2020 Notice and January 2021 notice, “Prior Notices” include the following *Federal Register* notices: February 9, 2018 at 83 FR 5844; August 14, 2018 at 83 FR 40314; February 19, 2019 at 84 FR 4836; June 20, 2019 at 84 FR 28848. The January 2021 Notice also includes the January 27, 2020 at 85 FR 4681; August 17, 2020 at 85 FR 50041; and September 28, 2020 at 85 FR 60821 as “Prior Notices”).

This waiver and alternative requirement modifies the requirements for CDBG-DR and CDBG-MIT funds awarded to the Commonwealth under Public Laws 115-123, 115-56, and 116-20. HUD is granting this waiver and alternative requirement based in part on the consideration of the Commonwealth’s request and justification that the waiver will facilitate the use of the funds.

In paragraph VI.D.50. of the February 2018 Notice (83 FR 5867), paragraph V.C.4 of the CDBG-MIT Main Notice (84 FR 45868), and paragraph V.B.5 of the June 2021 Notice (86 FR 32699) (together, the “Private Utility Prohibitions”), CDBG-DR grantees in receipt of funds

under Public Laws 115-123, 115-56, and 116-20 are prohibited from using funds to assist privately owned utilities. The Commonwealth has requested a waiver of this prohibition to allow it to use CDBG-DR and CDBG-MIT funds for activities that are eligible under title I of the HCDA, to be carried out by nonprofit and for-profit organizations that are considered privately-owned utilities.

As indicated in the Commonwealth's CDBG-DR and CDBG-MIT action plans, these funds will be provided for infrastructure and physical assets, including for electrical power system and other energy or utility related improvements. These investments of CDBG-DR and CDBG-MIT funds will enable the continuous operation of critical government and business functions and are essential to human health and safety and economic security for the residents of the Commonwealth. In its request, the Commonwealth indicates that it is encouraging projects that integrate energy assets and contribute to the diversification of the grantee's energy resources. The Commonwealth also indicates that it will evaluate proposed projects that entail assistance to private utilities in order to identify opportunities for alignment with its efforts to increase energy efficiency.

For example, the Commonwealth has determined that funding microgrids is one important strategy to foster renewable energy integration and community-level resilience and is consistent with Federal and Commonwealth clean energy policy. The Commonwealth indicates that small and moderately sized microgrids developed pursuant to this waiver will provide much-needed energy resilience at the community level. The Commonwealth will prioritize targeted services to vulnerable populations, underserved communities, and low- and moderate-income (LMI) areas, including protected classes and racially and ethnically concentrated areas of poverty, which are usually the most impacted during a disaster.

Based on the critical role that the electrical power system and other utility improvements will fulfill in ensuring long-term resilience in LMI areas, the Department finds good cause to waive the requirements in the *Federal Register* notices that prohibit CDBG-DR or CDBG-MIT

assistance to be used for private utilities and, as a condition of the waiver, HUD is imposing the alternative requirements described below. Accordingly, the Private Utility Prohibitions identified above shall be made inapplicable for the Commonwealth's CDBG-DR and CDBG-MIT grants awarded under Public Laws 115-123, 115-56, and 116-20.

To ensure consistency in the implementation of CDBG-DR and CDBG-MIT funds for private utility assistance, HUD is imposing the same alternative requirements on the Commonwealth's CDBG-DR or CDBG-MIT funds under Public Laws 115-123, 115-56, and 116-20 as were established for CDBG-DR funds provided pursuant to Public Law 117-43.

While it is possible that not every CDBG-DR or CDBG-MIT assisted utility will serve predominantly LMI populations, HUD recognizes that LMI populations would benefit especially from the increased resilience and recovery of private utilities. HUD also recognizes that privately-owned, for-profit utilities have a means of obtaining private investment or otherwise recapturing costs from ratepayers. Therefore, HUD's alternative requirement below includes basic safeguards that HUD has determined are necessary to ensure that costs comply with the certification to give maximum feasible priority to activities that benefit LMI persons and that costs are necessary and reasonable and do not duplicate other financial assistance. The following modified alternative requirement also makes clear that assistance to utilities is subject to all other requirements that apply to the use of funds and must be for an eligible activity under section 105(a):

The Commonwealth may assist private for-profit, non-profit, or publicly owned utilities as part of disaster-related activities that are eligible under Section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the grantee complies with the following:

1. The funded activity must comply with applicable CDBG-DR or CDBG-MIT requirements, including the requirements that the assisted activity will meet a national objective, the activity will address an electrical power system unmet need, unmet

recovery need or a risk identified in the grantee's mitigation needs assessment, and if the assistance is provided to a for-profit entity for an economic development project under section 105(a)(17), the grantee must first comply with the underwriting requirements found at Appendix A of 24 CFR part 570.

2. The grantee must carry out the grant consistent with the grantee's certification that

“With respect to activities expected to be assisted with CDBG–DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families,” or

“with respect to activities expected to be assisted with CDBG–MIT funds, the relevant action plan has been developed to give priority to activities that will benefit low- and moderate- income families.”

To fortify compliance with the existing certifications, if the grantee carries out activities that assist privately-owned, for-profit utilities, the grantee must prioritize assistance to for-profit utilities that will benefit areas where at least 51 percent of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

3. The grantee must determine that the costs of the activity to assist a utility are necessary and reasonable and that they do not duplicate other financial assistance. To fortify these requirements and achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, the grantee must document that the level of assistance provided to a private, for-profit utility addresses only the actual identified needs of the utility. Additionally, the grantee must establish policies and procedures to ensure that the CDBG–DR and CDBG-MIT funds that assist private, for-profit utilities reflect the actual identified financing needs of the assisted businesses by

establishing a mix of financing terms (loan, forgivable loan, and/or grant) for each assisted private, for-profit utility, based on the business's financial capacity, in order to ensure that assistance is based on actual identified need.

III. Pub. L. 116-20 Waivers and Alternative Requirements

Waiver to Allow Assistance to Privately Owned Utilities (State of Iowa only)

The *Federal Register* notice published on January 27, 2020 (85 FR 4681) (the "January 2020 Notice") announced the allocation of \$96,741,000 of CDBG-DR funds under Public Law 116-20 (the "2019 Appropriations Act") to the State of Iowa for recovery from disasters occurring in 2019. These funds have been provided for necessary expenses related to disaster relief, long term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation due to a qualified disaster. The January 2020 Notice requires grantees to adhere to the requirements published in "Prior Notices" (defined in the January 2020 Notice to include the following *Federal Register* notices: February 9, 2018 at 83 FR 5844; August 14, 2018 at 83 FR 40314; February 19, 2019 at 84 FR 4836; and June 20, 2019 at 84 FR 28848). The waiver and alternative requirement in this section modifies the requirements for CDBG-DR funds awarded to Iowa under Public Law 116-20. Iowa has submitted a request and justification for the waiver provided herein to facilitate the use of the funds.

The incorporation of "Prior Notices" subjects Iowa to the requirements in paragraph VI.D.50. of the February 2018 Notice (83 FR 5867), which prohibit the State from using funds under Public Law 116-20 to assist privately owned utilities (the "Private Utility Prohibition"). Iowa has requested a waiver of this prohibition to allow it to fund activities that are eligible under title I of the HCDA, to be carried out by a nonprofit cooperative that will supply solar electricity to LMI residents in the Harvest Hills housing development. In 2022, the Iowa Economic Development Authority awarded \$18,951,673 to the City of Woodbine for the construction of up to 40 LMI homes and infrastructure in support of housing development. Rather than install solar panels on each home, the city proposes to construct a solar array to be

operated by the local electricity provider, Harrison County Rural Electric Cooperative (REC) to support the added electrical capacity needs associated with the large-scale development in the small community. Panels for the solar array will save customers the cost of installing and maintaining individual solar panels on their homes and businesses. By allowing Harrison County REC to construct and operate the solar array, LMI households in the Harvest Hills housing development will have reduced electric bills and more disposable income.

Harrison County REC is the electric utility provider for Harvest Hills and is a nonprofit cooperative. As a nonprofit entity, excess capital is not considered profit; rather it is reinvested into the utility or returned to members as dividends. Additionally, the infrastructure improvements would otherwise be eligible if CDBG-DR grantees in receipt of funds under Public Law 116-20 were not prohibited from providing funds to privately owned utilities.

In recognition of the circumstances outlined in Iowa's request, the Department finds good cause to waive the Private Utility Prohibition and, as a condition of the waiver, HUD is imposing the alternative requirements described below.

To ensure consistency in the implementation of CDBG-DR funds for private utility assistance, HUD is imposing the same alternative requirements on Iowa's use of CDBG-DR for private utility assistance under Public Law 116-20 as were established for CDBG-DR funds provided pursuant to Public Law 117-43.

While it is possible that not every CDBG-DR assisted utility will serve predominantly LMI populations, HUD recognizes that LMI populations would benefit especially from the increased resilience and recovery of private utilities. HUD also recognizes that privately-owned, for-profit utilities have a means of obtaining private investment or otherwise recapturing costs from ratepayers. Therefore, HUD's alternative requirement below includes basic safeguards that HUD has determined are necessary to ensure that costs comply with the certification to give maximum feasible priority to activities that benefit LMI persons and that costs are necessary and reasonable and do not duplicate other financial assistance. The following alternative requirement

also makes clear that assistance to utilities is subject to all other requirements that apply to the use of funds and must be for an eligible activity under section 105(a):

Iowa may assist private for-profit, non-profit, or publicly owned utilities as part of disaster-related activities that are eligible under Section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the grantee complies with the following:

1. The funded activity must comply with applicable CDBG-DR requirements, including the requirements that the assisted activity will meet a national objective, the activity will address an unmet recovery need, and if the assistance is provided to a for-profit entity for an economic development project under Section 105(a)(17), the grantee must first comply with the underwriting requirements found at Appendix A of 24 CFR part 570.
2. The grantee must carry out the grant consistent with the grantee's certification that "With respect to activities expected to be assisted with CDBG-DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families,"

To fortify compliance with the existing certification, if the grantee carries out activities that assist privately-owned, for-profit utilities, the grantee must prioritize assistance to for-profit utilities that will benefit areas where at least 51 percent of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

3. The grantee must determine that the costs of the activity to assist a utility are necessary and reasonable and that they do not duplicate other financial assistance. To fortify these requirements and achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, the grantee must document that the level of

assistance provided to a private, for-profit utility addresses only the actual identified needs of the utility. Additionally, the grantee must establish policies and procedures to ensure that the CDBG-DR funds that assist private, for-profit utilities reflect the actual identified financing needs of the assisted businesses by establishing a mix of financing terms (loan, forgivable loan, and/or grant) for each assisted private, for-profit utility, based on the business's financial capacity in order to ensure that assistance is based on actual identified need.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online on HUD's CDBG-DR website at https://www.hud.gov/program_offices/comm_planning/cdbg-dr and for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Adrianne Todman,
Deputy Secretary.

[BILLING CODE 4210-67]

[FR Doc. 2022-26823 Filed: 12/8/2022 8:45 am; Publication Date: 12/9/2022]